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Special Counsel to Betta Products, Inc.
And Special Counsel to Dana McCurnin,
the Trustee of the Betta Products
Litigation Trust

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BETTA PRODUCTS, INC., and DANA
MCCURNIN, trustee of the Betta Products
Litigation Trust,

Plaintiffs,

v.

DISTRIBUTION SYSTEMS AND
SERVICES, INC., aka DSS,

Defendant.

Appellate Case No. CV 07- 02661 VRW

Bankruptcy Case No.: 03-10925
Adversary Case No.: 05-1046

**NOTICE OF MOTION AND MOTION FOR
VOLUNTARY DISMISSAL OF APPEAL;
MEMORANDUM IN SUPPORT**

Hearing Date and Time:

Date: October 25, 2007

Time: 2:30 p.m.

Place: 450 Golden Gate Ave.

San Francisco, CA 94102

**TO THE HONORABLE VAUGHN R. WALKER, UNITED STATES DISTRICT CHIEF
JUDGE, AND TO DEFENDANT NAMED HEREIN:**

PLEASE TAKE NOTICE that on October 25, 2007 at 2:30 p.m. Betta Products, Inc. and
Dana McCurnin, Trustee for the Betta Products Litigation Trust ("Appellants") will and hereby do
move for voluntary dismissal of the appeal confirming the arbitration award before the Honorable
Vaughan R. Walker, Chief Judge, United States District Court, in Courtroom 6, 17th Floor of the

1 District Court for the Northern District of California located at 450 Golden Gate Ave., San
2 Francisco, CA 94102.

3 Appellants Betta Products, Inc., ("Betta", or the "Debtor") and Dana McCurnin
4 ("Trustee"), Trustee of the Betta Products Litigation Trust, by and through the undersigned
5 counsel, hereby submit this motion for voluntary dismissal of their pending appeal ("Appeal") of
6 the Judgment Confirming Arbitration Award entered March 1, 2007, by the Bankruptcy Court for
7 the Northern District of California, Santa Rosa Division ("Bankruptcy Court") (Adv. No. 05-
8 1046). Through this motion, Betta and the Trustee respectfully request that the Court dismiss the
9 Appeal of the Bankruptcy Court's Judgment Confirming Arbitration Award ("Judgment"), without
10 prejudice and without costs. This Motion is made based on this notice of motion and motion, the
11 following memorandum, the briefs on file in this case and, any oral testimony allowed by the
12 Court at the hearing.
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14

15 **MEMORANDUM IN SUPPORT**
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17 Betta and the Trustee filed their notice of appeal of the Bankruptcy Court's Judgment on
18 May 11, 2007, before the Bankruptcy Court had set the non-arbitrable claims for trial. Since that
19 time the Bankruptcy Court has denied the parties' motions and countermotions for summary
20 judgment and has set the trial on the non-arbitrable claims for January 29, 2008. See Bankruptcy
21 Court Docket No. 190. DSS has now served Betta and the Trustee with substantial requests for
22 discovery. Betta and the Trustee also intend to conduct additional discovery. Betta and the
23 Trustee request that the Court dismiss their Appeal to allow them to focus their efforts on the pre-
24 trial and trial preparations of their non-arbitrable claims.
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26 Betta and the Trustee have requested that DSS stipulate to the dismissing the Appeal. DSS
27 has declined to stipulate to dismissal without prejudice and without costs. Betta and the Trustee
28

1 assert that DSS would suffer little prejudice from the dismissal without prejudice and costs
2 because the appellate briefs cover the same issues that were covered in the Bankruptcy Court in
3 DSS' and the Betta and the Trustee's respective motions to confirm and vacate the arbitration
4 award. Therefore, it is extremely likely that little time and effort was involved on the part of DSS
5 and its counsel in responding to the Betta and the Trustee's appellate brief.
6

7 Wherefore, Betta and the Trustee respectfully request the Court dismiss the Appeal without
8 prejudice and without costs.

9 DATED: September 14, 2007

BRINKMAN PORTILLO, PC

11 By: /s/ Daren R. Brinkman
12 Daren R. Brinkman
13 Special counsel for Betta Products Inc. and Dana
14 McCurnin, Trustee of Betta Products Litigation
15 Trust.
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

The undersigned certifies and declares as follows:

I am employed in the City of Westlake Village and County of Los Angeles, in the State of California. I am over the age of 18 and not a party to the within action. I am employed by Brinkman Portillo, P.C. whose business address is 4333 Park Terrace Drive, Suite 205, Westlake Village, California 91361.

On **September 14, 2007**, I served the forgoing documents described as:

**NOTICE OF MOTION AND MOTION FOR VOLUNTARY DISMISSAL OF APPEAL;
MEMORANDUM IN SUPPORT**

on the interested parties in this action

☒ by placing ☒ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☒ **BY MAIL**

☒ **OVERNITE EXPRESS MAIL**

Mitchell Greenberg
Abbey, Weitzberg, Warren, & Emery
100 Stony Point Rd. #200
P.O.Box 1566
Santa Rosa, CA. 95401

James A. Beitz
Hagerty Johnson & Beitz, PA
701 Fourth Avenue South, Ste 700
Minneapolis, MN 55415

United States Trustee's Office
235 Pine Street, Ste. 700
San Francisco, CA 94104

☒ I deposited such envelope in a United States Postal Service drop box at Westlake Village, California. The envelope was mailed with postage thereon fully prepaid.

☒ I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with a United States Postal Service drop box on that same day with postage thereon fully prepaid at Westlake Village, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing in affidavit.

☒ (**Federal**) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **September 14, 2007**, at Westlake Village, California.

Madelynn Alford

